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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,632	06/06/2000	Li Mo	064731.0145	9584
7590	02/07/2005		EXAMINER MILLS, DONALD L	
Baker Botts LLP 2001 Ross Avenue Dallas, TX 75201-2980			ART UNIT 2662	PAPER NUMBER

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 09/588,632	Applicant(s) MO ET AL.	
	Examiner Donald L Mills	Art Unit 2662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/23/01, 11/28/01, 03/26/02, 04/19/02, 06/20/02, 08/06/02, 11/13/02 & 04/15/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 15-18 are objected to because of the following informalities:

Claims 15-18 depend upon a canceled claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5-12, and 15-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheesman et al. (US 6,680,933 B1), hereinafter referred to as Cheesman, in view of Rekhter et al. (US 6,526,056 B1), hereinafter referred to as Rekhter.

Regarding claim 1, Cheesman discloses a telecommunications switch for switching protocol data, which comprises:

Receiving connectionless and connection oriented signals from a plurality of source peripheral network elements at an ingress core network element (Referring to Figure 4, the switch 100 supporting connection-oriented and connectionless type service, receives signals at a location between access interfaces and network interfaces for traffic management. See column 8, lines 8-10.)

Determining a signaling type associated with each received signal, the signaling type comprising connectionless signaling or connection oriented signaling (Referring to Figure 5, the ingress processor 112 parses each incoming protocol data unit to determine the service to which it belongs, comprising ATM and IP/MPLS. See column 8, lines 30-33.)

Appending a transport label to each received signal based upon the determination of the signaling type, each transport label comprising an indication of the signal's signaling type (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information. See column 8, lines 42-47.)

Communicating the signals and appended transport labels toward destination peripheral network elements according to signaling procedures associated with each signal's signaling type (Referring to Figure 5, egress processor 114 parses the protocol data units received from the switching fabric 103 to determine the required type of scheduling and scheduling treatment based on the signal type for output towards the protocol data units destination. See column 8, lines 62-67.)

Cheesman does not disclose an interface identifier operable to specify an interface of an egress core network element between the ingress core network element processing the signal and one or more destination peripheral network elements.

Note, the Applicant describes the interface identifier as "information specifying addresses of interfaces facilitating communication between a core network element 13 and various peripheral network elements 18-24" (See page 11, lines 16-21; page 18, lines 15-29; page 21, lines 4-14; and page 31, lines 3-16.) Therefore, the Examiner interprets the *interface identifier* as

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information for specifying a path through the network from the core network element to the destination network element.

Rekhter teaches that the four bytes immediately following the link-level header should be interpreted as an entry in a "tag stack." The first twenty bits should be interpreted as the tag and the twenty-fourth, bottom-of-stack-indicator bit S tells whether the packet contains any more tag-stack entries. The first 20-bit field carries the actual value of the Label which comprises information needed to forward the packet, such as the next hop ("interface identifier," information for specifying a path through the network) and the outgoing data link encapsulation (See column 8, lines 15-20 and column 36, lines 40-46.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement tag stack of Rekhter in the system of Cheesman for both connection and connectionless oriented signals. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for VPN traffic as taught by Rekhter (See column 5, lines 7-8.)

Regarding claims 2 and 12, the primary reference further teaches *wherein the signaling type associated with a particular signal further comprises a combination of connectionless and connection oriented signaling* (Referring to Figure 5, the ingress processor 112 parses each incoming protocol data unit to determine the service to which it belongs, comprising ATM and IP/MPLS signaling. See column 8, lines 30-33.)

Regarding claim 3, the primary reference further teaches *wherein at least some of the plurality of signals comprise Multi-protocol label switching signals, and wherein at least some of the plurality of signals comprise Internet Protocol signals* (Referring to Figure 5, the ingress

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processor 112 parses each incoming protocol data unit to determine the service to which it belongs, comprising IP/MPLS signals. See column 8, lines 30-33.)

Regarding claims 5, 20, and 28, the primary reference further teaches *wherein each transport label comprises:*

A format field operable to identify the signal's signaling type/a label value field containing information useful in processing the associated signal according to its signaling type (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising service-related information and a destination port. See column 8, lines 42-47.)

Regarding claim 6, the primary reference further teaches *wherein at least one signal comprises a connectionless signal and wherein the label value field of that signal's transport label comprises a node identification operable to identify a network element through which the at least one signal will be routed* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising service-related information and a the destination port, the protocol data unit comprising IP/MPLS traffic. See column 8, lines 42-47.)

Regarding claim 7, the primary reference further teaches *wherein at least one signal comprises a connection oriented signal and wherein the label value field of that signal's transport label comprises a path identifier operable to facilitate construction of a virtual circuit over which the at least one signal will traverse* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising service-related information and a destination port, the protocol data unit comprising ATM traffic for transmission over a virtual channel per the destination port. See column 8, lines 42-47.)

Regarding claim 8, the primary reference further teaches *wherein at least one of the transport labels comprises a plurality of sub-transport labels, each sub-transport label providing an instruction regarding the associated signal's communication toward one of the destination peripheral network elements* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information. See column 8, lines 42-47.)

Regarding claims 9, 21, and 29, the primary reference further teaches *wherein the plurality of sub-transport labels comprise a stack of sub-transport labels, and wherein the top sub-transport label identifies a node identification useful in determining a next hop for a connectionless signal or a path identification useful in determining a virtual circuit for a connection oriented signal* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information, inherently comprising the node used for determining a next hop for an IP signal and a virtual circuit for an ATM signal. See column 8, lines 42-47.)

Regarding claims 10, 22, and 30 as explained in the rejection of claims 1, 19, and 27; Cheesman and Rekhter teach all of claim limitations of claims 1, 19, and 27 (parent claims).

Cheesman does not disclose *wherein the sub-transport label at the bottom of the stack of sub-transport labels includes the interface identifier operable to specify the interface of the egress core network element between the ingress core network element processing the signal and the one or more destination peripheral network elements.*

Note, the Applicant describes the interface identifier as “information specifying addresses of interfaces facilitating communication between a core network element 13 and various

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peripheral network elements 18-24” (See page 11, lines 16-21; page 18, lines 15-29; page 21, lines 4-14; and page 31, lines 3-16.) Therefore, the Examiner interprets the *interface identifier* as information for specifying a path through the network from the core network element to the destination network element.

Rekhter teaches that the four bytes immediately following the link-level header should be interpreted as an entry in a “tag stack.” The first twenty bits should be interpreted as the tag and the twenty-fourth, bottom-of-stack-indicator bit S tells whether the packet contains any more tag-stack entries. The first 20-bit field carries the actual value of the Label, which comprises information needed to forward the packet, such as the next hop (“interface identifier,” information for specifying a path through the network) and the outgoing data link encapsulation (See column 8, lines 15-20 and column 36, lines 40-46.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement tag stack of Rekhter with the Label for forwarding the packet at the bottom of the tag stack in the system of Cheesman for both connection and connectionless oriented signals. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for VPN traffic as taught by Rekhter (See column 5, lines 7-8.) And, placing the forwarding information at the bottom of the stack would enhance system processing by determining if additional processing is necessary prior to packet forwarding. In addition, in so doing unexpected results are not produced since the position can be arbitrarily chosen.

Regarding claim 11, Cheesman discloses a telecommunications switch for switching protocol data, which comprises:

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Receiving connectionless signals and connection oriented signals at a first network element, each signal including a transport label having a format field identifying a signaling type associated with the signal, a label value field containing information useful in processing the signal according to its signaling type (Referring to Figure 5, the egress processor 114 parses the protocol data units received from the switching fabric 103, inherently comprising both connection-oriented and connectionless type packet data units with a switching tag comprising information of the destination port and service-related information. See column 8, lines 62-64, 32-33, and 42-47.)

A stack of sub-transport labels, each sub-transport label providing an instruction regarding the associated signal's communication toward one of the destination peripheral network element, and wherein the top sub-transport label identifies a node identification useful in determining a next hop for a connectionless signal or a path identification useful in determining a virtual circuit for a connection oriented signal (Referring to Figures 1 and 5, the ATM/IP packets, which comprise their respective header, are encapsulated with a header that contains information from the look-up and forwards the encapsulated PDU to the switching fabric 16. See column 5, lines 45-48.)

For each signal, examining the format field of the transport label to determine the signal's signaling type (Referring to Figure 5, the egress processor 114 parses the protocol data units received from the switching fabric 103 to determine the required type of scheduling and queuing treatment based upon the type of traffic and service-related information. See column 8, lines 62-64.)

For each signal, interpreting the information in the label value field on the transport label according to the signal type (Referring to Figure 5, the egress processor 114 parses the protocol data units received from the switching fabric 103 to determine the required type of scheduling and queuing treatment based upon the type of traffic and destination port. See column 8, lines 62-64.)

For each signal, communicating the signal to another network element using signaling procedures associated with the signal's signaling type (Referring to Figure 6, the egress processor 114 transmits the protocol data unit onto the egress link 130 based upon the type of signal received. See column 9, lines 58-60.)

Cheesman does not disclose *wherein the bottom sub-transport label includes an interface identifier operable to specify an interface of an egress core network element between the ingress core network element processing the signal and the destination peripheral network element.*

Note, the Applicant describes the interface identifier as “information specifying addresses of interfaces facilitating communication between a core network element 13 and various peripheral network elements 18-24” (See page 11, lines 16-21; page 18, lines 15-29; page 21, lines 4-14; and page 31, lines 3-16.) Therefore, the Examiner interprets the *interface identifier* as information for specifying a path through the network from the core network element to the destination network element.

Rekhter teaches that the four bytes immediately following the link-level header should be interpreted as an entry in a “tag stack.” The first twenty bits should be interpreted as the tag and the twenty-fourth, bottom-of-stack-indicator bit S tells whether the packet contains any more tag-stack entries. The first 20bit field carries the actual value of the Label which comprises

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information needed to forward the packet, such as the next hop and the outgoing data link encapsulation (See column 8, lines 15-20 and column 36, lines 40-46.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the tag stack of Rekhter with the Label for forwarding the packet at the bottom of the tag stack in the system of Cheesman for both connection and connectionless oriented signals. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for VPN traffic as taught by Rekhter (See column 5, lines 7-8.) And, placing the forwarding information at the bottom of the stack would improve the system by determining if additional processing is necessary prior to packet forwarding. Additionally, in so doing unexpected results are not produced since the position can be arbitrarily chosen.

Regarding claims 15, 23, and 31 the primary reference further teaches *examining the top sub-transport label to determine that the signal comprises a connectionless signal and comparing the value in the label value field of the top sub-transport label to a node identification associated with the first network element* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information, the PDU comprises the node information used for determining a next hop for an IP signal and a virtual circuit for an ATM signal. See column 8, lines 42-47.)

Regarding claims 16, 24, and 32 the primary reference further teaches *determining that the node identification associated with the first network element does not match the value in the label value field of the transport label and routing the signal toward the network element associated with the node identification in the label value field of the top sub-transport label*

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(Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information, the PDU comprises the node information used for determining a next hop for an IP signal and a virtual circuit for an ATM signal, the comparison is made in the routing table. See column 8, lines 42-47.)

Regarding claims 17, 25, and 33 the primary reference further teaches *determining that the node identification associated with the first network element matches the value in the label value field of the top sub-transport label; removing the top sub-transport label from the stack of sub-transport labels; and examining the next sub-transport label to determine further processing instructions* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information, the PDU comprises the node information used for determining a next hop for an IP signal and a virtual circuit for an ATM signal. See column 8, lines 42-47.)

Regarding claims 18, 26, and 34 the primary reference further teaches *examining the top sub-transport label to determine that the signal comprises a connection oriented signal and that the label-value field in the top sub-transport label comprises a path identifier; and using the value in the label value field of the top sub-transport label to at least being establishing a virtual circuit between the first network element and another network element* (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information, the PDU comprises the node information used for determining a next hop for an IP signal and a virtual circuit for an ATM signal. See column 8, lines 42-47.)

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Regarding claim 19, Cheesman discloses a telecommunications switch for switching protocol data, which comprises:

A first core network element comprising an ingress core network element operable to receive a signal associated with a signaling type from a source peripheral network element, the signaling type comprising connectionless signaling or connection oriented signaling (Referring to Figure 4, ingress processor 112 parses each incoming protocol data unit, from connection and connectionless sources, to determine the service. See column 8, lines 8-10 and 30-31,) the first core network element further operable to append to the received signal a transport label including an instruction regarding how to process the signal according to the signaling type (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information. See column 8, lines 42-47.)

A second core network element operable to receive the signal with appended transport label, to examine transport label to determine the signaling type associated with the signal, and to process the signal according to the associated signaling type (Referring to Figure 5, egress processor 114 parses the protocol data units received from the switching fabric 103 to determine the required type of scheduling and scheduling treatment based on the signal type for output towards the protocol data units destination. See column 8, lines 62-67.)

Cheesman does not disclose *an interface identifier operable to specify an interface of an egress core network element between the ingress core network element processing the signal and one or more destination peripheral network elements.*

Note, the Applicant describes the interface identifier in the specification as “information specifying addresses of interfaces facilitating communication between a core network element 13

and various peripheral network elements 18-24” (See page 11, lines 16-21; page 18, lines 15-29; page 21, lines 4-14; and page 31, lines 3-16.) Therefore, the Examiner interprets the *interface identifier* as information for specifying a path through the network from the core network element to the destination network element.

Rekhter teaches that the four bytes immediately following the link-level header should be interpreted as an entry in a “tag stack.” The first twenty bits should be interpreted as the tag and the twenty-fourth, bottom-of-stack-indicator bit S tells whether the packet contains any more tag-stack entries. The first 20bit field carries the actual value of the Label which comprises information needed to forward the packet, such as the next hop (“interface identifier,” information for specifying a path through the network) and the outgoing data link encapsulation (See column 8, lines 15-20 and column 36, lines 40-46.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement tag stack of Rekhter in the system of Cheesman for both connection and connectionless oriented signals. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for VPN traffic as taught by Rekhter (See column 5, lines 7-8.)

Regarding claim 27, Cheesman discloses a telecommunications switch for switching protocol data, which comprises:

A processor operable to receive a network signal from the first peripheral network element and to determine a signaling type associated with the received network signal (Referring to Figure 4, ingress processor 112 parses each incoming protocol data unit, from connection and connectionless sources, to determine the service. See column 8, lines 8-10 and 30-31,) *the*

processor further operable to generate a transport label including an instruction regarding how to process the signal according to its signaling type, and to append the transport label to the network signal based upon the determination of the signaling type to generate a formatted network signal (Referring to Figure 5, ingress processor 112 encapsulates the protocol data unit with a switching tag comprising the destination port and service-related information, based upon the signal type. See column 8, lines 42-47.)

A core interface operable to receive the formatted network signal and to facilitate communication of the formatted network signal to another core network element for processing according to the signaling type identified in the transport label (Referring to Figure 5, switching fabric 103 operates on the internal encapsulation protocol to route protocol data units to their destination port via the egress processor 114. See column 8, lines 54-56.)

Cheesman does not disclose *an interface identifier operable to specify an interface of an egress core network element between the ingress core network element processing the signal and one or more destination peripheral network elements.*

Note, the Applicant describes the interface identifier in the specification as “information specifying addresses of interfaces facilitating communication between a core network element 13 and various peripheral network elements 18-24” (See page 11, lines 16-21; page 18, lines 15-29; page 21, lines 4-14; and page 31, lines 3-16.) Therefore, the Examiner interprets the *interface identifier* as information for specifying a path through the network from the core network element to the destination network element.

Rekhter teaches that the four bytes immediately following the link-level header should be interpreted as an entry in a “tag stack.” The first twenty bits should be interpreted as the tag and

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the twenty-fourth, bottom-of-stack-indicator bit S tells whether the packet contains any more tag-stack entries. The first 20bit field carries the actual value of the Label which comprises information needed to forward the packet, such as the next hop ("interface identifier," information for specifying a path through the network) and the outgoing data link encapsulation (See column 8, lines 15-20 and column 36, lines 40-46.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement tag stack of Rekhter in the system of Cheesman for both connection and connectionless oriented signals. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for VPN traffic as taught by Rekhter (See column 5, lines 7-8.)

Regarding claim 35, Cheesman discloses *a peripheral interface operable to receive the network signal from the first peripheral network element, and to communicate network signals received from core network elements to the second peripheral network element* (Referring to Figure 5, switch 100 comprises access interfaces 102a, 102b, and 102c for reception and transmission flows to and from network interfaces 104a and 104b. See column 7, lines 62-65.)

Regarding claim 36 as explained above in the rejection statement of claim 1, Cheesman discloses all of the claim limitations of claim 1 (parent claims.) Cheesman further discloses *receiving the signals and transport labels at the egress core network element* (Referring to Figure 5, egress processor 114 parses the protocol data units received from the switching fabric 103 to determine the required type of scheduling and scheduling treatment based on the switching tag. See column 8, lines 62-67.) Cheesman does not disclose *removing the appended*

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transport labels form each signal and communicating each signal to a destination peripheral network element.

Rekhter teaches PE1 forwards the packet CE1 after removing tag T3 (See column 8, lines 51-52.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement tag removal of Rekhter in the system of Cheesman. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for MPLS traffic as taught by Rekhter (See column 5, lines 7-8.)

Regarding claim 37 as explained above in the rejection statement of claim 19, Cheesman discloses all of the claim limitations of claim 1 (parent claim.) Cheesman does not disclose *wherein the second core network element comprises an egress core network element operable to remove the appended transport label and communicate the signal to a destination peripheral network element.*

Rekhter teaches PE1 forwards the packet CE1 after removing tag T3 (See column 8, lines 51-52.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement tag removal of Rekhter in the system of Cheesman. One of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for MPLS traffic as taught by Rekhter (See column 5, lines 7-8.)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheesman et al. (US 6,680,933 B1), hereinafter referred to as Cheesman, in view of Rekhter et al. (US 6,526,056 B1), hereinafter referred to as Rekhter, further in view of Raj et al. (US 6,628,649 B1), hereinafter referred to as Raj.

Regarding claim 4 as explained above in the rejection statement of claim 1, Cheesman discloses all of the claim limitations of claim 1 (parent claim.) Cheesman does not disclose *at least some of the plurality of signals comprising multi-protocol label switching signals with asynchronous transfer mode, Frame Relay, or packet-over-SONET encoding.*

Raj teaches a switch control mechanism 201 is a label switch controller (LSC) that implements MPLS technology using a label distribution protocol such as LDP in conjunction with a routing protocol such as OSPF to control the flow of data packets in the form of labeled data portions, such as labeled ATM cells (See column 18, lines 4-9.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the labeled ATM cells of Raj in the system of Cheesman. One of ordinary skill in the art would have been motivated to do so in order to enhance the types of services supported to comprise labeled ATM cells.

Response to Arguments

6. Applicant's arguments with respect to claims 1-12 and 15-37 have been considered but are moot in view of the new ground(s) of rejection.

Rejection Under 35 USC § 103

On page 16 of the remarks, regarding claim 11, Applicant argues that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would have been motivated to do so in order to reduce the data-storage requirements of the network devices for VPN traffic as taught by Rekhter (See column 5, lines 7-8.). Since both Cheesman and Rekhter are drawn to VPNs and queue management, the combination is both logical and appropriate.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

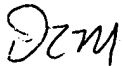
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Mills whose telephone number is 571-272-3094. The examiner can normally be reached on 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Donald L Mills



February 2, 2005



JOHN PEZZLO
PRIMARY EXAMINER